

EX PARTE OR LATE FILED

LAW OFFICES

DOCKET FILE COPY ORIGINAL

BLOOSTON, MORDKOFKY, JACKSON & DICKENS

2120 L STREET, N.W.

WASHINGTON, D.C. 20037

(202) 659-0830

TELECOPIER: (202) 828-5568

April 22, 1994

ARTHUR BLOOSTON  
OF COUNSEL

EUGENE MALISZEWSKY  
DIRECTOR OF ENGINEERING  
PRIVATE RADIO

SEAN A. AUSTIN  
DIRECTOR OF ENGINEERING  
COMMON CARRIER RADIO

HAROLD MORDKOFKY  
ROBERT M. JACKSON  
BENJAMIN H. DICKENS, JR.\*  
JOHN A. PRENDERGAST  
GERARD J. DUFFY  
RICHARD D. RUBINO\*  
BRIAN D. ROBINSON  
SUSAN J. BAHR  
JULIAN P. GEHMAN\*

\*NOT ADMITTED IN D.C.

RECEIVED

WRITER'S DIRECT DIAL NO.

(202) 828-5510

MAY 16 1994

Gail Brown  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 5002  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Attn: Ralph Haller, Chief - Private Radio Bureau  
Chair, PCS Task Force

Re: General Docket No. 90-314

**STATEMENT OF RADIOFONE, INC.**

Dear Ms. Brown:

Radiofone, Inc. (Radiofone) by its attorneys, hereby submits these comments concerning the panel discussion held on Personal Communications Service (PCS) issues on April 11-12, 1994. This panel discussion related to the Commission's Second Report and Order, 8 FCC Rcd. 7700 (1993), and these comments are filed pursuant to the Commission's News Release, Mimeo No. 42480, released April 4, 1994. As discussed below, the Commission should take the time to resolve these serious issues raised on reconsideration in the above-referenced docket, in view of the lasting and national significance of PCS. In particular, the Commission must eliminate or significantly modify the cellular ownership restriction.

Several of the speakers at the open forum urged the Commission to immediately affirm its broadband PCS rules with little or no change, because of the perceived need to expedite PCS auctions. See, Testimony of Tom Stroup of the Personal Communications Industry Association (PCIA), Open Panel Transcript ("Tr.") at pp. 20-25; Elliott Hamilton of U.S. Wireless Consulting, Tr. p. 123; Dave Twyber Of Northern Telecom, Tr. p. 126. The reason for this urgency is cited as a potential erosion of PCS market share if there is further delay issuing these licenses. However, Radiofone has demonstrated that the cellular ownership restriction

No. of Copies rec'd 2 Copies  
List ABCDE

adopted as Section 99.204 of the PCS rules must be eliminated or significantly modified, since it fails to pass both administrative and constitutional muster. See, December 8, 1993 Petition for Partial Reconsideration filed by Radiofone in General Docket No. 90-314. It is respectfully submitted that the Commission must take the brief amount of time necessary to correct this flaw in its rules. Cellular carriers pioneered the mobile radio industry, taking the risks to develop the technologies which have led to PCS. The cellular ownership restriction ironically prevents the very companies that helped revolutionize telecommunications in America from participating in the next step of development.

Radiofone has demonstrated that incumbent cellular carriers will not be able to exercise "undue market power" in providing commercial mobile radio services in the future, since there will be two cellular carriers, up to seven PCS providers, Enhanced Specialized Mobile Radio Service (ESMR) carriers and Mobile Satellite Service (MSS) carriers. Hence, a cellular carrier's attempt to warehouse a single PCS license, even assuming they would do so, would have no tangible effect on the competitive environment. Moreover, it is conceptually nonsensical that a cellular carrier would pay a substantial bid on a PCS license, since this would result in a significant economic loss with no tangible corresponding gains. Failure to invest the funds needed to construct the system would result in the loss of the license after only five years, under the Commission's strict construction requirement. At least one panelist, Mr. Hausman of MIT, agrees with Radiofone's analysis. Tr. p. 204-205. The Commission's approach in excluding cellular participation ignores the fact that, in order to remain competitive in the marketplace, a cellular carrier has every incentive to construct and operate a PCS system. PCS is supposed to be a progression from cellular. The Commission's approach assumes it to be just another cellular system.<sup>1</sup>

The current cellular ownership restriction would allow incumbent cellular licensees to seek only 10 MHz of PCS

---

<sup>1</sup> In allocating cellular, the Commission allowed wireline participation despite concerns about the threat of cross-subsidization and undue advantage because of control over bottleneck facilities. Despite these concerns, the Commission saw fit to allow wireline participation because of the opportunity for these carriers to advance the state of telecommunications. Likewise, cellular carriers should now be allowed to utilize their expertise to make PCS an improvement over existing cellular services.

spectrum. Radiofone agrees with those panelists who indicate that 10 MHz may not be enough spectrum to provide a usable and/or competitive service. At least one of these panelists advocates that the Commission change its allocation to six blocks of 20 MHz each. Tr. p. 135, 156, 160. Radiofone concurs in this proposal, and urges the Commission to make cellular carriers eligible for one of these 20 MHz blocks. This would represent an equitable resolution of the Commission's concerns over cellular carrier participation in PCS.

Respectfully submitted,  
**RADIOFONE, INC.**



Benjamin H. Dickens, Jr.  
John A. Prendergast  
Blooston, Mordkofsky, Jackson  
& Dickens  
2120 L Street, N.W.  
Suite 300  
Washington, D.C. 20037  
(202) 659-0830  
Its Attorneys

**CERTIFICATE OF SERVICE**

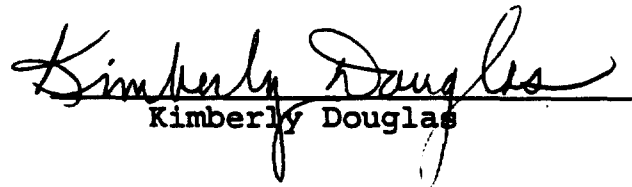
I, Kimberly Douglas, hereby certify that on this 22nd day of April, 1994, I caused to be hand-delivered a copy of the foregoing "STATEMENT OF RADIOPHONE, INC." to the following:

Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Chairman Reed Hundt  
Federal Communications Commission  
1919 M Street, NW Room 814  
Washington, DC 20554

Commissioner James Quello  
Federal Communications Commission  
1919 M Street, NW Room 802  
Washington, DC 20554

Commissioner Andrew Barrett  
Federal Communications Commission  
1919 M Street, NW Room 844  
Washington, DC 20554

  
Kimberly Douglas